

## Matrimonial Regimes in Puerto Rico and Prenuptial Agreements

Puerto Rico's Civil Code defines marriage as:

a. civil institution, originating in a civil contract whereby a man and a woman mutually agree to become husband and wife and to discharge toward each other the duties imposed by law. It is valid only when contracted and solemnized in accordance with the

provisions of law, and it may be dissolved before the death of either spouse only in the cases expressly provided for in this title.

Article 68 of Puerto Rico's Civil Code, 31 L.P.R.A. § 221. This type of special contract entails a series of economic consequences for the contracting parties that will depend on the matrimonial regime to which the spouses submitted.

In Puerto Rico, there are two types of matrimonial regimes, the one produced by virtue of conjugal partnership contracts or prenuptial agreements, including but not limited to separation of property, and the one created by law, also known as community property regime or *sociedad legal de gananciales*.

On one hand, future spouses may stipulate the rules and conditions that will govern present and future assets, or regulate the pecuniary interests arising from the relationship through prenuptial agreements.

Guadalupe Solís v. González Dieruz, 172 D.P.R. 676, 682 (2007). Prenuptial agreements are not matrimonial regimes themselves, but vehicles to establish the regime to which the future spouses will be subjected, without it being limited to the total separation of property.

Therefore, this special type of agreement allows future spouses to establish an extensive variety of clauses and conditions, provided that they do not contravene law, moral or public order. Article 1268 of Puerto Rico's Civil Code, 31 L.P.R.A. §3552. See *also*, Guadalupe Solís v. González Dieruz, 172 D.P.R. 676, 682 (2007); S.L.G. Irizarry v. S.L.G. García, 155 D.P.R. 713 (2001).

In fact, prenuptial agreements can regulate, amongst other things, the rights of the spouses on their respective properties; the rights to the profits made by them during the marriage; the interests of the children and the family; the interests of the third parties that contract with either of the spouses, and, ultimately, the economic and social interest of the marriage. *Guadalupe Solís v. González Dieruz*, 172 D.P.R. 676, 683 (2007); *Gil Enseñat v. Marini Román*, 167 D.P.R. 553 (2006).

In exercising this power, future spouses may opt for various economic regimes recognized by our legal system, such as:

- (a) total separation of property;
- (b) separation of property with a share of the profits;
- (c) community property;
- (d) a rejection of the community property, or
- (e) any other regime.

*Guadalupe Solís v. González Dieruz*, 172 D.P.R. 676, 683 (2007); *Domínguez Maldonado v. E.L.A.*, 137 D.P.R. 954 (1995). Per Puerto Rico's Civil Code, this type of contract must be executed before marriage and, **"after marriage has been celebrated, the marriage contract executed prior thereto cannot be changed, whether present or future property is involved"**.

Articles 1267 and 1272 of Puerto Rico's Civil Code, 31 L.P.R.A. §3551, 3556. It is also required that prenuptial agreements, and modifications made, be contained in a public instrument and be executed before marriage. Article 1273 of Puerto Rico's Civil Code, 31 L.P.R.A. §3557.

On the other hand, in the absence of a prenuptial agreement relating to property, it shall be understood that the marriage was contracted under the community property regime, Puerto Rico's default legal regime. Article 1267 of Puerto Rico's Civil Code, 31 L.P.R.A. §3551. *See also*, *Maldonado v. Cruz Dávila*, 161 D.P.R. 1, (2004).

*The community property regime can also be chosen, either explicitly or implicitly, in a prenuptial agreement.*

Each spouse owns a present undivided one-half interest in all the property acquired by the community and, unless specifically exempted, everything acquired by a spouse during the existence of a community is presumed to be owned equally by both spouses.

## **It is precisely because the lack of a prenuptial agreement implies that the marriage is contracted under the community property regime**

The Supreme Court of Puerto Rico has established that stipulations contained in prenuptial agreements must be clear and precise. In these cases, said provisions must be interpreted strictly. *Guadalupe Solís v. González Dieruz*, 172 D.P.R. 676, 684 (2007); *Vilariño Martínez v. Registrador*, 88 D.P.R. 288 (1963). Thus, when a specific property regime is clearly established in a prenuptial agreement, no further regime modification is allowed.

On more than one occasion, the Supreme Court of Puerto Rico has considered whether the behavior and acts of the spouses during the marriage has the potential of modifying the property regime agreed upon through the prenuptial agreement.

Such a determination would contravene the statutory doctrine that establishes that any modification to the prenuptial agreement must take place before the marriage. *Domínguez Maldonado v. E.L.A.*, 137 D.P.R. 954, 961 (1995). In spite of this, in *Umpierre v. Torres Diaz*, 11

D.P.R. 449 (1983), the Supreme Court of Puerto Rico determined that the prenuptial agreement under controversy was merely a list of the private property each spouse held and that the parties conducted their marriage as a community property regime.

In this case, it was clear that, even though the parties executed a prenuptial agreement, they did not establish the property regime that would govern the relationship. Consequently, as the spouses did not rule out a community property regime, and acted as if the property belonged to both, it was reasonable to conclude that a community property regime was in place.

On the contrary, in *Domínguez Maldonado v. E.L.A.*, 137 D.P.R. 954 (1995), the Supreme Court of Puerto Rico ruled that the parties to the case had granted a prenuptial agreement in which the community property regime was expressly rejected.

Therefore, to rule in favor of the petitioner's contention that the behavior and acts of the couple during the marriage were constitutive of a community property regime, would imply a jurisprudential variation of the statutory doctrine regarding prenuptial agreement modifications.

A similar result was achieved in *Maldonado v. Cruz*, 161 D.P.R. 1 (2004), where the Supreme Court of Puerto Rico established that the couple had expressly rejected the community property regime in the prenuptial agreement and, instead, established a total separation of property regime.

In this case, the Supreme Court determined that, irrespective of whether the spouses had engaged in community property regime like behavior, the total separation of property agreed upon through the prenuptial agreement prevented the creation, by judicial fiat, of a community property regime.

Even more so, the Supreme Court explained that the fact that the spouses complied with their legal obligation to contribute to family expenses such as personal expenses, mortgage payments, home improvements and entertainment expenses, was not at odds with the existence of a separation of property regime. *Maldonado v. Cruz*, 161 D.P.R. 1, 29 (2004).